

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THEOFANIS PAPADOPOULOS, *et al.*,

Plaintiffs,

v.

FRED MEYER STORES, INC.,

Defendant.

No. C04-0102RSL

ORDER GRANTING IN PART  
PLAINTIFFS' "PERMISSIVE  
MOTION IN LIMINE"

This matter comes before the Court on "Plaintiffs' Permissive Motion in Limine Re: Subsequent Remedial Repairs" (Dkt. #70). Plaintiffs seek to admit the testimony of James Garrett, a person who worked on the floor tile at issue in this case after the incident. Defendant does not oppose this motion, but asserts that the testimony of Mr. Garrett at trial should be limited to information regarding the condition of the floor tile and for impeachment purposes and not allowed as evidence of a subsequent remedial measure to prove negligence or wrongdoing under Fed. R. Evid. 407. Defendant requests a limiting instruction on this subject. Defendant also asserts that Mr. Garrett's statement should be excluded at trial as inadmissible hearsay. See Response at 2.

The Court finds that Mr. Garrett's testimony is admissible at trial as evidence of the condition of the floor tile. However, Mr. Garrett's testimony is excluded as evidence of a

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1 subsequent remedial measure to prove negligence or wrongdoing under Fed. R. Evid. 407. The  
2 Court will instruct the jury accordingly under Fed. R. Evid. 105. Whether Mr. Garrett's  
3 statement is inadmissible hearsay depends on the purpose for which it is being offered.  
4 Accordingly, the Court reserves ruling on the admissibility of Mr. Garrett's statement until trial.

5 For all of the foregoing reasons, "Plaintiffs' Permissive Motion in Limine Re: Subsequent  
6 Remedial Repairs" (Dkt. #70) is GRANTED in part.

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8 DATED this 8th day of November, 2006.

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11 Robert S. Lasnik  
12 United States District Judge  
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